WPMS No.1359 of 2004

Hon. P.C. Pant, J.

Heard learned counsel for the petitioner.

By means of this petition, the petitioner has challenged order/finding dated 10.12.2004 given on issue no. 4 in civil suit no. 144 of 2001 where by the learned trial court has refused to stay the proceedings of the subsequent suit.

For staying the subsequent suit under section 10 of Code of Civil Procedure, 1908, it is necessary that the parties in the suit should be same. Learned trial court appears to have rightly rejected the application for the reason that the parties were not same in the suits pending before it. Otherwise also in view of the principle of law laid down in Pukhraj Jain Vs. GopalKrishna (2004) 7 S.C.C. 251, the provisions of section 10 has been held to be directory in nature.

In view of the facts and circumstances of the case, this Court is not inclined to exercise its jurisdiction under article 226 read with 227 of Constitution of India to interfere with the impugned order.

Therefore, the writ petition is dismissed in limine with the observation that the petitioner will be at liberty to make application before the learned trial court under order IV-A, rule 1 (as amended by the state of U.P., applicable in Uttaranchal) of the Code of Civil Procedure, 1908, for consolidation of the suits and the learned trial court if he so likes to consolidate the suits, may order so.

(P.C. Pant, J.)

Dt.24.12.2004

SJ